

ACT 64

H.B. NO. 3257

A Bill for an Act Relating to Use of Intoxicants.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 291E-11, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The test or tests shall be administered at the request of a law enforcement officer having probable cause to believe the person operating a vehicle upon a public way, street, road, or highway or on or in the waters of the State is under the influence of an intoxicant or is under the age of twenty-one and has consumed a measurable amount of alcohol, only after:

- (1) A lawful arrest; and
- (2) The person has been informed by a law enforcement officer [of the sanctions under section 291E-41 or 291E-65, as applicable to the offense.] that the person may refuse to submit to testing under this chapter.”

SECTION 2. Section 291E-15, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§291E-15]]~~ **Refusal to submit to breath, blood, or urine test; subject to administrative revocation proceedings.** If a person under arrest refuses to submit to a breath, blood, or urine test, none shall be given, except as provided in section 291E-21 ~~[, but the person shall be subject].~~ Upon the law enforcement officer’s determination that the person under arrest has refused to submit to a breath, blood, or urine test, if applicable, then a law enforcement officer shall:

- (1) Inform the person under arrest of the sanctions under section 291E-41 or 291E-65; and
 - (2) Ask the person if the person still refuses to submit to a breath, blood, or urine test, thereby subjecting the person to the procedures and sanctions under part III or section 291E-65, as applicable[-];
- provided that if the law enforcement officer fails to comply with paragraphs (1) and (2), the person shall not be subject to the refusal sanctions under part III or section 291E-65.”

SECTION 3. Section 291E-33, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Whenever a person is arrested for a violation of section 291E-61 or 291E-61.5 on a determination by the arresting law enforcement officer that:

- (1) There was reasonable suspicion to stop the vehicle or the vehicle was stopped at an intoxicant control roadblock established and operated in compliance with sections 291E-19 and 291E-20; and
- (2) There was probable cause to believe that the person was operating the vehicle while under the influence of an intoxicant;

the law enforcement officer immediately shall take possession of any license held by the person and request the person to take a test for alcohol concentration, in the case

of an alcohol related offense, or a test for drug content in the blood or urine, in the case of a drug related offense. The law enforcement officer shall inform the person that, in the case of an alcohol related offense, the person shall elect to take a breath test, a blood test, or both, pursuant to section 291E-11[-], but that the person may refuse to submit to testing under this chapter. In the case of a drug related offense, the person shall elect to take a blood test, a urine test, or both, pursuant to section 291E-11[-The], after being informed that the person may refuse to submit to testing under this chapter. When applicable under section 291E-15, the law enforcement officer also shall [inform]:

- (1) Inform the person of the sanctions under section 291E-41, including the sanction for refusing to take a breath, blood, or urine test[-], if applicable; and
- (2) Ask the person if the person still refuses to submit to a breath, blood, or urine test, upon the law enforcement officer's determination that, after the person has been informed by a law enforcement officer that the person may refuse to submit to testing, the person under arrest has refused to submit to a breath, blood, or urine test.

Thereafter, the law enforcement officer shall complete and issue to the person a notice of administrative revocation and shall indicate thereon whether the notice shall serve as a temporary permit. The notice shall serve as a temporary permit, unless, at the time of arrest: the person was unlicensed; the person's license or privilege to operate a vehicle was revoked or suspended; or the person had no license in the person's possession."

SECTION 4. Section 291E-34, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The notice, when completed by the law enforcement officer and issued to the respondent, shall contain at a minimum the following information relating to the incident that gives rise to the issuance of the notice of administrative revocation:

- (1) Information identifying the respondent;
- (2) The specific violation for which the respondent was arrested;
- (3) The date issued and the date the administrative revocation is scheduled to go into effect;
- ~~(4) That the respondent was informed of the sanctions of this part and of the consequences of refusing to be tested for alcohol concentration or drug content in the blood or urine and whether the respondent consented to be tested;~~
- (4) The expiration date of the temporary permit, and the temporary motor vehicle registration and temporary number plates if applicable; and
- ~~(5) That the issuance of the notice of administrative revocation will be administratively reviewed."~~

SECTION 5. Section 291E-36, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Whenever a respondent has been arrested for a violation of section 291E-61 or 291E-61.5 and submits to a test that establishes: the respondent's alcohol concentration was .08 or more; the presence, in the respondent's blood or urine, of any drug that is capable of impairing the respondent's ability to operate a vehicle in a careful and prudent manner; or whenever a respondent has been involved in a collision resulting in injury or death and a blood or urine test performed pursuant to section 291E-21 establishes that the respondent's alcohol concentration was .08 or more or establishes the presence in the respondent's blood or urine of any drug that

is capable of impairing the respondent's ability to operate a vehicle in a careful and prudent manner, the following shall be forwarded immediately to the director:

- (1) A copy of the arrest report or the report of the law enforcement officer who issued the notice of administrative revocation to the person involved in a collision resulting in injury or death and the sworn statement of the arresting law enforcement officer or the officer who issued the notice of administrative revocation, stating facts that establish that:
 - (A) There was reasonable suspicion to stop the vehicle, the vehicle was stopped at an intoxicant control roadblock established and operated in compliance with sections 291E-19 and 291E-20, or the respondent was tested pursuant to section 291E-21;
 - (B) There was probable cause to believe that the respondent had been operating the vehicle while under the influence of an intoxicant;
 - ~~[(C) The respondent was informed of:~~
 - ~~(i) The sanctions of section 291E-41;~~
 - ~~(ii) The possibility that criminal charges may be filed; and~~
 - ~~(iii) The probable consequences of refusing to be tested for alcohol concentration or drug content;]~~ and
 - ~~[(D)]~~ (C) The respondent agreed to be tested or the person was tested pursuant to section 291E-21;
- (2) In a case involving an alcohol related offense, the sworn statement of the person responsible for maintenance of the testing equipment, stating facts that establish that, pursuant to section 321-161 and rules adopted thereunder:
 - (A) The equipment used to conduct the test was approved for use as an alcohol testing device in this State;
 - (B) The person had been trained and at the time the test was conducted was certified and capable of maintaining the testing equipment; and
 - (C) The testing equipment used had been properly maintained and was in good working condition when the test was conducted;
- (3) In a case involving an alcohol related offense, the sworn statement of the person who conducted the test, stating facts that establish that, pursuant to section 321-161 and rules adopted thereunder:
 - (A) The person was trained and at the time the test was conducted was certified and capable of operating the testing equipment;
 - (B) The person followed the procedures established for conducting the test;
 - (C) The equipment used to conduct the test functioned in accordance with operating procedures and indicated that the respondent's alcohol concentration was at, or above, the prohibited level; and
 - (D) The person whose breath or blood was tested is the respondent;
- (4) In a case involving a drug related offense, the sworn statement of the person responsible for maintenance of the testing equipment, stating facts that establish that, pursuant to section 321-161 and rules adopted thereunder:
 - (A) The equipment used to conduct the test was approved for use in drug testing;
 - (B) The person conducting the test had been trained and, at the time of the test, was certified and capable of maintaining the testing equipment; and
 - (C) The testing equipment used had been properly maintained and was in good working condition when the test was conducted;

- (5) In a case involving a drug related offense, the sworn statement of the person who conducted the test, stating facts that establish that, pursuant to section 321-161 and rules adopted thereunder:
 - (A) At the time the test was conducted, the person was trained and capable of operating the testing equipment;
 - (B) The person followed the procedures established for conducting the test;
 - (C) The equipment used to conduct the test functioned in accordance with operating procedures and indicated the presence of one or more drugs or their metabolites in the respondent's blood or urine; and
 - (D) The person whose blood or urine was tested is the respondent;
- (6) A copy of the notice of administrative revocation issued by the law enforcement officer to the respondent;
- (7) Any license, and motor vehicle registration and number plates, if applicable, taken into possession by the law enforcement officer; and
- (8) A listing of any prior alcohol or drug enforcement contacts involving the respondent."

SECTION 6. Section 291E-37, Hawaii Revised Statutes, is amended by amending subsections (d) and (e) to read as follows:

"(d) The director shall administratively revoke the respondent's license and privilege to operate a vehicle if the director determines that:

- (1) There existed reasonable suspicion to stop the vehicle, the vehicle was stopped at an intoxicant control roadblock established and operated in compliance with sections 291E-19 and 291E-20, or the person was tested pursuant to section 291E-21;
- (2) There existed probable cause to believe that the respondent operated the vehicle while under the influence of an intoxicant; and
- (3) The evidence proves by a preponderance that:
 - (A) The respondent operated the vehicle while under the influence of an intoxicant; or
 - (B) The respondent operated the vehicle and refused to submit to a breath, blood, or urine test after being informed [øf]:
 - (i) That the person may refuse to submit to testing in compliance with section 291E-11; and
 - (ii) Of the sanctions of this part[-] and then asked if the person still refuses to submit to a breath, blood, or urine test, in compliance with the requirements of section 291E-15.

(e) The director shall administratively revoke the registration of any vehicle owned or registered to the respondent and take custody of any number plates issued to the respondent if the director determines that the respondent is a repeat intoxicated driver and that:

- (1) There existed reasonable suspicion to stop the vehicle, the vehicle was stopped at an intoxicant control roadblock established and operated in compliance with sections 291E-19 and 291E-20, or the person was tested pursuant to section 291E-21;
- (2) There existed probable cause to believe that the respondent operated the vehicle while under the influence of an intoxicant; and
- (3) The evidence proves by a preponderance that:
 - (A) The respondent operated the vehicle while under the influence of an intoxicant; or

- (B) The respondent operated the vehicle and refused to submit to a breath, blood, or urine test after being informed [øf]:
 - (i) That the person may refuse to submit to testing in compliance with section 291E-11; and
 - (ii) Of the sanctions of this part[-] and then asked if the person still refuses to submit to a breath, blood, or urine test, in compliance with the requirements of section 291E-15.”

SECTION 7. Section 291E-38, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) The director shall affirm the administrative revocation only if the director determines that:

- (1) There existed reasonable suspicion to stop the vehicle, the vehicle was stopped at an intoxicant control roadblock established and operated in compliance with sections 291E-19 and 291E-20, or the person was tested pursuant to section 291E-21;
- (2) There existed probable cause to believe that the respondent operated the vehicle while under the influence of an intoxicant; and
- (3) The evidence proves by a preponderance that:
 - (A) The respondent operated the vehicle while under the influence of an intoxicant; or
 - (B) The respondent operated the vehicle [and,] and refused to submit to a breath, blood, or urine test after being informed [øf]:
 - (i) That the person may refuse to submit to testing in compliance with section 291E-11; and
 - (ii) Of the sanctions of this part[-, refused] and then asked if the person still refuses to submit to a breath, blood, or urine test[-] in compliance with the requirements of section 291E-15.”

SECTION 8. Section 291E-41, Hawaii Revised Statutes, is amended by amending subsections (d) and (e) to read as follows:

- “(d) If a respondent has refused to be tested after being informed [øf]:
- (1) That the person may refuse to submit to testing in compliance with section 291E-11; and
 - (2) Of the sanctions of this part[-] and then asked if the person still refuses to submit to a breath, blood, or urine test, in compliance with the requirements of section 291E-15,

the revocation imposed under subsection (b)(1), (2), (3), and (4) shall be for a period of one year, two years, four years, and a lifetime, respectively.

(e) In addition to subsection (d), any motor vehicle registration of a respondent who is a repeat intoxicated driver and who refused to be tested after being informed [øf]:

- (1) That the person may refuse to submit to testing in compliance with section 291E-11; and
- (2) Of the sanctions of this part and then asked if the person still refuses to submit to a breath, blood, or urine test, in compliance with the requirements of section 291E-15,

shall be revoked for the periods specified in subsection (d), and the respondent shall be prohibited from subsequently registering any motor vehicle for the applicable revocation period.”

SECTION 9. Section 291E-65, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) If a person under arrest for operating a vehicle after consuming a measurable amount of alcohol, pursuant to section 291E-64, refuses to submit to a breath or blood test, none shall be given, except as provided in section 291E-21, but the arresting law enforcement officer, as soon as practicable, shall submit an affidavit to a district judge of the circuit in which the arrest was made, stating:

- (1) That at the time of the arrest, the arresting officer had probable cause to believe the arrested person was under the age of twenty-one and had been operating a vehicle upon a public way, street, road, or highway or on or in the waters of the State with a measurable amount of alcohol;
- ~~(2) That the arrested person had been informed of the sanctions of this section; and~~
- ~~(3)] (2) That the arrested person was informed that the person may refuse to submit to a breath or blood test, in compliance with section 291E-11;~~
- (3) That the person had refused to submit to a breath or blood test[-];
- (4) That the arrested person was:
 - (A) Informed of the sanctions of this section; and then
 - (B) Asked if the person still refuses to submit to a breath or blood test, in compliance with the requirements of section 291E-15; and
- (5) That the arrested person continued to refuse to submit to a breath or blood test.

(b) Upon receipt of the affidavit, the district judge shall hold a hearing within twenty days. The district judge shall hear and determine:

- (1) Whether the arresting law enforcement officer had probable cause to believe that the person was under the age of twenty-one and had been operating a vehicle upon a public way, street, road, or highway or on or in the waters of the State with a measurable amount of alcohol;
- (2) Whether the person was lawfully arrested;
- ~~(3) Whether the arresting officer had informed the person of the sanctions of this section; and]~~
- (3) Whether the person was informed that the person may refuse to submit to a breath or blood test, in compliance with section 291E-11;
- (4) Whether the person refused to submit to a test of the person's breath or blood[-];
- (5) Whether the person was:
 - (A) Informed of the sanctions of this section; and then
 - (B) Asked if the person still refuses to submit to a breath or blood test, in compliance with the requirements of section 291E-15; and
- (6) Whether the person continued to refuse to submit to a breath or blood test.”

SECTION 10. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 11. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 12. This Act shall take effect on January 1, 2007.

(Approved May 2, 2006.)